5 Phil. 15

[G.R. No. 2026. September 13, 1905]

ALEJANDRO A. SANTOS, PLAINTIFF AND APPELLANT, VS. ANGEL LIMUCO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

This is an action of forcible entry and detainer, commenced in the court of a justice of the peace of Manila on the 28th day of September, 1901, before the new Code of Procedure went into effect. Judgment in favor of the plaintiff was entered by the justice of the peace on the 29th day of October, 1901, after the new code went into effect. The defendants undertook to appeal from this judgment. After various proceedings in the Court of First Instance a judgment was therein entered dismissing the action on the ground that the plaintiff had included in his suit different defendants who occupied separate tracts of land under separate and distinct contracts with him, the court below holding that such causes of action could not be united in one complaint. Plaintiff has appealed from that judgment, and assigns two errors.

He claims that the court erred in denying his motion to dismiss the appeal taken by the defendants from the judgment of the justice of the peace. It appears from the record that the defendants made a motion that their appeal be admitted, and that the case be heard *de novo* in the Court of First Instance. On the 8th day of July, 1902, the Court of First Instance granted the defendants ten days in which to present a demurrer to the complaint. This order, in effect, granted their motion, and admitted the appeal. No exception to this order was ever taken by the appellant. A demurrer was afterwards presented by the defendants. The appellant participated in the hearing of this demurrer, and afterwards, by the order of the court, and with the consent of the parties, the demurrer was overruled. This order was made on the 19th day of July, 1902. Nothing more appears to have been done in the case until July or August, 1903, when the appellant, for the first time, moved the court to dismiss the appeal ' from the judgment of the justice of the peace. This motion was denied on the 3d day of August; to this ruling the appellant excepted, and this exception constitutes his first assignment of error.

As said by the court below in its order denying the appellant's motion, it appears that a year before the motion was made an order was made admitting the appeal, to which no exception was taken, and that the appellant thereafter voluntarily appeared in the case and took part in the hearing of a demurrer, and consented that the demurrer should be overruled. After all these proceedings were taken it was too late for him to claim that

the defendants' appeal should not have been admitted. The second error alleged relates to the joinder of causes of action.

The present Code of Procedure does not contain any section which declares what causes of action may be joined in a complaint. Such a provision is found in most of the codes of the United States which are similar to ours. It is admitted by the appellant, however, that a plaintiff has no right in an action of forcible entry and detainer to join as defendants two persons who are in possession of distinct and separate tracts of land, under distinct and separate contract with the owners. He claims, nevertheless, that no proper objection was made by the defendants below to this misjoinder of causes of action. We do not think this contention is supported by the record. The defendants presented in the court below one pleading, which was both a demurrer and an answer. In that part of it which they called a demurrer they expressly alleged the misjoinder of causes of action and upon the same ground upon which the court below dismissed the case. In that part of the pleading which they call an answer they allege that each one of the defendants separately from all the others is the owner of a distinct tract of land. We think that these allegations were sufficient to present this question. The appellant has cited in his brief various provisions of the law in regard to the consolidation of actions, and claims that there was here in effect a consolidation of actions by the consent of the defendants, but it is apparent that these authorities have no application to this case. They are applicable to a case where two or more separate and distinct actions are brought, and relate to an order of court consolidating those separate actions, but here there were not two or more actions. There never was but one action. In that action there were several defendants, who, as we construe the record, never consented that their separate cases with the plaintiff should be tried together in one suit.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded to the court below for execution of said judgment. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

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